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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 12, Original

THE UNITED STATES OF AMERICA,
Plaintiff,

vs.

STATE OF CALIFORNIA

MOTION PURSUANT TO PRE-TRIAL CONFERENCE FOR LEAVE TO FILE ANSWER AND ANSWER

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O'MELVENY & MYERS,
Of Counsel.

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Defendant

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The State of California asks leave of the Court to file the Answer submitted herewith, with the proviso, however, that the Answer heretofore filed may remain with the Court as an Appendix to the Answer submitted herewith for such use as the Court or the parties may wish to make of it, such Appendix not to be treated as a part of the pleadings and the plaintiff to be without any obligation to admit, deny, or otherwise take into account any of the material contained therein as a pleading or part of a pleading; provided further that the Court may consider all matters and facts alleged in said Appendix to the extent permissible by judicial notice, with opportunity on part of the plaintiff to object at any

stage of the litigation to the correctness or relevance of any of the matters and facts set forth in said Appendix and with further opportunity on part of both parties to prove such facts or any other facts which the Court may determine to be material and not susceptible of judicial notice.

May 21, 1946.

Respectfully submitted,

ROBERT W. KENNY,
Attorney General of the State of California;
WILLIAM W. CLARY,
Assistant Attorney General of the State of California,
Counsel for Defendant.

LOUIS W. MYERS,
HOMER CUMMINGS,
MAX O'RELL TRUITT,
JACKSON W. CHANCE,
CUMMINGS & STANLEY,
O'MELVENY & MYERS,
Of Counsel.

The United States of America does not oppose the foregoing motion, and if it is granted, the United States of America consents to the withdrawal of its Motion to Strike Answer which it has previously filed in this suit.

TOM C. CLARK,
Attorney General;
J. HOWARD MCGRATH,
Solicitor General.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 12, Original

THE UNITED STATES OF AMERICA,
Plaintiff,

vs.

STATE OF CALIFORNIA,
Defendant

ANSWER OF STATE OF CALIFORNIA

Comes now defendant, State of California, by its Attorney General, and, answering to the complaint herein, admits, denies and alleges as follows:

I

Admits the allegations and each of them contained in Paragraphs I, III and IV of the complaint.

II

Answering Paragraph II of the complaint:

Alleges that defendant does not know and it cannot be determined therefrom what times are referred to in the phrase "all times herein material" or at what time it is

alleged that plaintiff became "the owner in fee simple of, or possessed of paramount rights in and powers over, the lands, minerals and other things of value underlying the Pacific Ocean, * * *";

Alleges that defendant does not know and it cannot be determined therefrom whether plaintiff claims to be the owner in fee simple of said lands and properties, or claims merely to be possessed of "paramount rights in and powers over" them;

Alleges that defendant does not know and it cannot be determined therefrom what rights or what powers are referred to in the phrase "paramount rights in and powers over" them;

Alleges that defendant does not know and it cannot be determined therefrom what rights or what powers are referred to in the phrase "paramount rights in and powers over";

Alleges that defendant does not know and it cannot be determined therefrom what waters are referred to in the phrase "inland waters";

Alleges that defendant does not know and it cannot be determined therefrom what is meant by the phrase "extending seaward three nautical miles," as to whether it means three nautical miles seaward from "the ordinary low water mark," or three nautical miles "outside of the inland waters";

Alleges that defendant does not know and it cannot be determined therefrom what is meant or intended by the following phrase in paragraph II of said complaint:

> "the lands, minerals and other things of value underlying the Pacific Ocean, lying seaward of the ordinary low water mark on the coast of California and outside of the inland waters of the State, extending seaward three nautical miles * * *";

Alleges that there are numerous bays, harbors and indentations on the coast line of California, among which are: San Diego Bay, Mission Bay, Laguna Bay, Newport Bay, Anaheim Bay, Alamitos Bay, San Pedro Bay, Long Beach Harbor, San Pedro Channel, Santa Monica Bay, Santa Barbara Channel, Hueneme Harbor, Point Mugu Bay, Santa Barbara Harbor, Morro Bay, Monterey Bay, Half Moon Bay, San Francisco Bay, Bodega Bay, Bolinas Bay, Drakes Bay and Humboldt Bay;

Alleges that defendant does not know and it cannot be determined therefrom how, in the case of each of said bays, harbors and indentations, the line of ordinary low water mark can be ascertained or what is meant by said phrase, as applied to such bays, harbors and indentations, or from what line the area extending 3 nautical miles seaward therefrom would be measured;

Alleges that defendant does not know and it cannot be determined therefrom whether the lands under the aforesaid bays, harbors and indentations along the California coast are claimed by plaintiff in this action;

Alleges that defendant does not know and it cannot be determined therefrom with any reasonable degree of certainty or with any certainty whatever, what lands along the coast of California are claimed by plaintiff in this action;

Denies that plaintiff now is or ever has been the owner in fee simple of or the owner of any title to or interest in the lands or the minerals or other things of value underlying the Pacific Ocean lying seaward of the ordinary low water mark on the coast of California, or any part or portion thereof (except such portions thereof as have been acquired by plaintiff from defendant or its successors in interest by grant, cession, quitclaim, lease or condemnation);

Denies that plaintiff is possessed of any paramount rights in or powers over said lands or minerals or other things of value or any thereof, other than such governmental powers of regulation and control as it possesses with respect to other lands owned by defendant. Denies that such rights and powers, or any thereof, comprise or include any title to or interest in said lands or minerals or other things of value, or any thereof, except such as have been acquired from defendant or its successors in interest by grant, cession, quitclaim, lease, or condemnation.

III.

Answering Paragraph V of the complaint, defendant admits and alleges that it has negotiated and executed leases on lands underlying the Pacific Ocean for the exploitation of the petroleum, gas and other mineral deposits, with numerous persons and corporations. Denies that the lessees to whom defendant has granted oil and gas leases on lands underlying the Pacific Ocean are too numerous to name or to make parties to this action. Denies that the lessees, or any of them, to whom defendant has granted oil and gas leases on lands underlying the Pacific Ocean have, or that any have, in violation of any asserted rights of the United States, entered upon the said lands, or any part thereof, or drilled wells for the recovery of petroleum or gas or other hydrocarbon substances, or any substances. In this connection defendant alleges that the United States has no right whatever to the petroleum or gas or other hydrocarbon substances, or any rights in connection with exploring for, drilling, removing, taking or using such substances from, in or under any of the lands underlying the Pacific Ocean within the boundaries of the State of California (other than such lands as it has acquired from defendant or its successors in interest by grant, cession, quit-

claim, lease or condemnation). Admits and alleges that for a long time last past many of the wells drilled in the lands underlying the Pacific Ocean have been producing quantities of petroleum, gas and other hydrocarbon substances of value which the lessees of defendant have removed, taken, and used, paying defendant the royalties and other considerations as specified in each respective lease. Denies that such lessees have converted to their own use any of such petroleum, gas or other hydrocarbon substances. Admits that neither the State nor its lessees have recognized any asserted right or any asserted title of the United States, nor have they paid to the United States either the value of any petroleum or other things of value taken from under lands lying under the Pacific Ocean or of any royalties thereon. In this connection defendant alleges that the United States has no right or interest whatever in or to the petroleum or other things of value taken from, in or under the lands under the Pacific Ocean within the boundaries of the State of California.

IV

Answering Paragraph VI of the complaint, defendant admits and alleges that Pacific Western Oil Corporation is a corporation organized and existing under the laws of the State of Delaware and now occupies and claims, under Lease No. 92, as amended by Lease No. 92a, executed in the year 1929, an area of described tide and submerged lands near Elwood in Santa Barbara County, California.

Admits and alleges that the lands described in Paragraph VI of the complaint are a portion only of the lands leased by the State of California to Pacific Western Oil Corporation extending into the Pacific Ocean and Santa Barbara Channel thereof in the County of Santa Barbara by Lease No. 92, as amended by Lease No. 92a, as therein more particularly described.

Admits that Pacific Western Oil Corporation, under claim of right based on said Lease No. 92, as amended by Lease No. 92a, is now and ever since in or about the year 1929 has been in actual possession of and producing petroleum of value and in substantial quantities from under that portion of the lands described in said Leases situated below the line of mean low tide of the Pacific Ocean and Santa Barbara Channel thereof. Denies that Pacific Western Oil Corporation is converting the petroleum to its own use. Admits and alleges in this connection that Pacific Western Oil Corporation is producing, extracting, taking and using the oil, gas and other hydrocarbon substances from wells drilled into the lands described in said Lease No. 92, as amended by Lease No. 92a, and is now and at all times material has been paying defendant State of California rents and royalties in accordance with the terms and provisions of said Leases. Upon information and belief, denies that the United States has made demand upon Pacific Western Oil Corporation for the surrender of possession of the lands described in said Lease No. 92, as amended by said Lease No. 92a, or has made demand that Pacific Western Oil Corporation discontinue the extraction or removal of petroleum or other minerals from said land; except that defendant admits and alleges that the United States, without any prior demand upon Pacific Western Oil Corporation as defendant is informed and believes and therefore alleges, on or about May 29, 1945 filed a complaint in the District Court of the United States for the Southern District of California, Central Division, entitled "United States of America, plaintiff v. Pacific Western Oil Corporation, a corporation, defendant," being Case No. 4493-B, Civil, seeking to recover possession of certain tide and submerged lands therein described, as there alleged to contain 144.07 acres more or less; which complaint, without further proceedings in said United

States District Court other than the extension of time for said defendant to appear and plead, was, on motion of Plaintiff, United States of America, dismissed on October 19, 1945. Defendant is informed and believes and upon such information and belief alleges that no demand has been made upon Pacific Western Oil Corporation to surrender possession of the lands attempted to be described in Paragraph VI of the complaint on file herein. Alleges that defendant State of California, by and through its lessee, Pacific Western Oil Corporation is in possession, and at all times since about the year 1929 has been in possession of the area of tide and submerged lands described in said Lease No. 92, as amended by said Lease No. 92a. Alleges that the tide and submerged lands described in said Lease No. 92, as amended by Lease No. 92a, lie under a part of the Santa Barbara Channel, and not in or under the open coast.

V

Answering Paragraph VII of the complaint, defendant denies the allegations, and each of them, therein contained. Denies that the State of California has no title to or interest in the lands, or any of them, alleged to be in controversy. Denies that the State of California has only those governmental powers over the lands alleged to be in controversy which it has with respect to other lands of the United States within the territorial jurisdiction of the State.

VI

Answering Paragraph VIII of the complaint, admits that the State of California has claimed to be, and alleges that the State of California has at all times since its admission into the Union on September 9, 1850 and prior thereto, been and is now the owner in fee simple of all lands below

the line of ordinary high water mark under all navigable waters within the exterior boundaries of the State (subject to grants and leases by the State to other parties, subject to condemnations by and grants and cessions to plaintiff, and subject to grants of certain portions thereof made by Mexico and Spain and confirmed by United States patents). Admits and alleges that at all times the State of California has asserted, claimed and announced its said ownership in fee simple of all such lands underlying navigable waters within the exterior boundaries of the State. Admits and alleges that the State of California will continue to claim such title for itself and will continue to exercise all the rights incident to such title. Denies that the State or its lessees or any other person acting under or pursuant to State authority at any time has trespassed or will trespass upon the lands alleged to be in controversy, or any part thereof. Denies that defendant or any of its lessees or anyone acting under authority of defendant State of California, in taking or using the minerals or other things of value from, in or under the lands alleged to be in controversy, will be in violation of any asserted rights of the United States, or that the United States will suffer irreparable, or any, injury, or that there is no adequate, or any, remedy, except by this action.

First Affirmative Defense

The State of California (hereinafter sometimes referred to as "the State") is the owner in fee simple of all lands underlying all navigable waters within the boundaries of the State, (subject to Legislative grants to the several municipalities and counties, and to grants, leases, easements, and other rights granted by the State to various parties, or condemned by plaintiff, and to grants by prior sovereigns confirmed by United States patent, more particularly mentioned in the Second and Third Affirmative

Defenses hereof). Title thus vested in the following manner:

1. Title thereto vested in the State upon or prior to its admission into the Union as one of the United States of America by Act of Congress of September 9, 1850, admitting the State into the Union "on an equal footing with the original states in all respects whatever," as expressly provided in said Act.

2. The original thirteen states (to wit, the States of Massachusetts, Rhode Island, New Hampshire, Connecticut, New York, New Jersey, Delaware, Pennsylvania, Virginia, Maryland, North Carolina, South Carolina and Georgia) own in fee simple, and at all times since not later than July 4, 1776, have so owned, all lands (except certain portions thereof expressly granted by such states, respectively or condemned by plaintiff) under all navigable waters within their respective boundaries, including all lands under all waters of the sea within at least three miles of their respective coasts, as well as all lands under all navigable bays, harbors, rivers and lakes.

3. The original thirteen states became vested with title to and ownership in fee simple of all lands under all such navigable waters at a time prior to the creation or formation of plaintiff, United States of America.

4. This Court has determined and declared, in previous decisions, that under the Common Law of England established prior to 1776, the Crown of England was the owner in fee simple of and held title to all lands under all navigable waters, as well under the sea out at least to the three-mile limit, as in bays, harbors, rivers and lakes.

5. The Crown of England, under English law, as declared and announced by this Court in its prior decisions,

likewise was the owner in fee simple of and held the title to all such lands under such navigable waters of all English colonies, including the thirteen colonies in America lying on the Atlantic seaboard.

6. Certain of the original thirteen states, prior to statehood and when existing as English colonies, became vested with title to lands under such navigable waters by grant or charter from the Crown of England at various times between 1584 and 1732.

7. The title and ownership of the Crown of England in and to all such lands under such navigable waters, not theretofore granted to the respective colonies, vested in the respective colonies, as sovereign States, upon becoming free and independent States in the year 1776 as subsequently confirmed by the Treaty of Peace of 1783 between the King of England and the original thirteen states.

8. None of the original thirteen states at any time or in any manner conveyed, granted, ceded, or surrendered title or ownership of their respective lands under such navigable waters to plaintiff, United States of America (except as to minor portions thereof specifically granted by State legislative authorization or condemned by plaintiff).

9. When the State of California was admitted into the Union as one of the United States of America "on an equal footing with the original states, in all respects whatever," it became vested (if it was not theretofore the owner thereof) with the same title to and ownership in fee simple of all lands under all navigable waters within the boundaries of the State in like manner with the ownership and title of the original thirteen states to lands under such navigable waters within their respective boundaries.

10. The boundaries of the State as established by its Constitution of 1849 and approved by Act of Congress of September 9, 1850, in admitting the State into the Union, extend into the Pacific Ocean, at least three English miles from and along the coast of California and include all islands, bays and harbors along and adjacent to the California coast.

11. A compact and agreement was formed between plaintiff and defendant upon the admission of the State of California into the Union by Act of Congress of September 9, 1850. Said compact and agreement are forever binding upon plaintiff whereby all tide and submerged lands within the boundaries of the State, subject to the exceptions above noted, became vested in the State by reason of the previously adjudicated and well-recognized meaning of the phrase used in said Act of Admission, to wit, that the State was thereby admitted "upon an equal footing with the original states, in all respects whatever."

Second Affirmative Defense

1. Plaintiff, United States of America, each of its branches and various of its departments and agencies acting within the scope of their authority as prescribed by law, has, ever since its formation in the year 1789 recognized, asserted, determined, adjudicated and acquiesced in the title and ownership of each of the original States and each of the newly admitted States, including the State of California since its admission in 1850, in and to all tide and submerged lands and all lands below the line of ordinary high water mark within the respective boundaries of each such State (except minor portions thereof granted to private parties or to the United States by the respective States or their grantees, or by prior sovereigns and confirmed by United States patent, or condemned by plaintiff).

2. Such recognition, assertion, determination, adjudication and acquiescence of ownership in the State of California, its grantees and lessees, as well as in the other States, consists of:

(a) Grants and cessions in fee simple made by the respective States to the United States, requested and accepted by the United States, of substantial portions of submerged lands, as well as tidelands, not only along the open coasts within the coastal waters adjacent to and a part of the respective coastal States, but also in and under bays, harbors, rivers and lakes within the respective States.

(b) Leases, easements, licenses and other interests granted by the respective States to the United States, requested and accepted by the United States, of substantial portions of tide and submerged lands, both reclaimed and unreclaimed.

(c) Large numbers of written opinions, prepared by the United States Attorney General and his assistants over many decades, advising the various officers, agencies, branches and departments of the United States, acting within the scope of authority as prescribed by law, in connection with innumerable acquisitions by the United States from the several States of their grantees of tide and submerged lands, advising that the respective States are the owners thereof. Such opinions of the Attorney General are required by Act of Congress making it the duty of the Attorney General and of his subordinates to render favorable title opinions prior to acquisitions of title to any property by the United States where improvements by the United States are proposed to be constructed thereon or thereto.

(d) Innumerable decisions of the General Land Office, Department of the Interior and the Secretary of the In-

terior, acting within the scope of authority as prescribed by law, over many decades, determining and holding that title to all tide and submerged lands along the open coast as well as within bays, harbors, rivers and lakes, is held by and owned by the respective States and not by the United States;

(e) Innumerable reports of the Chief of Engineers of the United States War Department and of his subordinates, acting within the scope of authority as prescribed by law, in connection with River and Harbor improvements and other matters, many of them reported to and acted upon by the Congress of the United States, that the respective States are the owners of all such tide and submerged lands, and in innumerable instances recommending appropriations by Congress upon the condition that the respective States or their grantees or successors deed or grant rights or interests to the United States in and to designated portions of tide and submerged lands both under coastal waters on the open coast of the coastal States and within bays, harbors, rivers and lakes.

(f) Other departments, agencies and officers of the United States acting within the scope of their authority as prescribed by law, have rendered opinions and made statements within their official duties, that the respective States are the owners of all tide and submerged lands within their respective boundaries.

Third Affirmative Defense

1. The State of California, acting in reliance upon the recognition by plaintiff, United States of America, of the State's ownership of and title to all lands under all navigable waters within the boundaries of the State (as more particularly alleged in the Second Affirmative Defense hereof), has made various and numerous grants, leases,

easements, franchises, licenses and other interests and its political subdivisions have taxed and assessed such granted or leased interests, in and to lands under navigable waters of the State, both along the open coast and in bays, harbors, rivers and lakes, to numerous parties and over a period commencing shortly after the formation of the State and continuing down to the present time.

2. The State of California, acting in reliance upon such recognition by plaintiff of the State's said ownership, has, by its various departments, agencies, officers and employees, as well as by its various grantees and lessees, gone into possession and is now in open, adverse and notorious possession of, and has exercised and is now exercising all rights and attributes of ownership, in and to large portions of submerged lands underlying the coastal waters of the State as well as in and to lands underlying navigable waters within the State of California in bays, harbors, rivers and lakes. The State and its municipalities and other grantees have expended huge sums in the reclamation and improvement of large portions of submerged lands.

Fourth Affirmative Defense

1. Plaintiff, United States of America, its judicial, legislative and executive branches and various of its departments and agencies, have uniformly (with the single exception mentioned in the Fifth Affirmative Defense) treated all lands under navigable waters on the open coast of California as being owned by the State of California ever since the year 1850 equally with the ownership by the State of all lands under all navigable waters within the exterior boundaries of the State lying below the line of mean high water mark. No distinction has ever been made or attempted by the United States until the last few months between lands below low water mark under navigable

waters situated on the open coast, tidelands along the coast, and tide and submerged lands under navigable waters within harbors, bays, rivers and lakes.

2. The courts of the United States, the Department of the Interior and the Secretary thereof, the United States Attorney General, the War Department, and various other departments and agencies of the United States have on innumerable occasions over a period of many decades decided, determined and asserted that the State of California owns all lands under all navigable waters within its boundaries, whether such lands lie below the line of mean low water mark on the open coast or are below mean high water mark located within bays, harbors, rivers and lakes.

3. Reference is hereby made to the allegations of the Second Affirmative Defense hereof for the details of the foregoing matters mentioned in this Fourth Affirmative Defense.

Fifth Affirmative Defense

1. On or prior to September 9, 1850, the State of California became, ever since has been, and is now the owner of all tide and submerged lands within the boundaries of said State.

2. Thereafter the State of California granted a portion of said tide and submerged lands under the navigable waters of San Francisco Bay to one Tichenor, whose said interest was transferred and became vested in Mission Rock Company. Said grantee and its successors in interest thereafter reclaimed such lands from the waters of San Francisco Bay and made it upland adjacent to certain small islands therein, known as "Mission Rock."

3. Thereafter, the United States of America, acting by and through the President, the Secretary of the Navy, and

the Attorney General, made claim, for naval purposes, in and to said tide and submerged lands so granted to said Tichenor. The United States thereupon brought suit in the United States District Court to eject said Mission Rock Company from said tide and submerged lands.

4. Thereafter said case was appealed to the United States Supreme Court, which court finally adjudicated the rights of the parties, and determined: (1) that the United States had no right, title, interest, or estate in or to said lands so reclaimed from beneath the navigable waters of San Francisco Bay; (2) that the United States had no right, title, interest or estate in or to tide and submerged lands in the State of California; (3) that the said State became vested with "the absolute property in * * * all soils under the tide waters within her limits"; (4) that Mission Rock Company owned said reclaimed tide and submerged land by virtue of the grant made by the State of California to its predecessor in title. The opinion of the United States Supreme Court in said case was reported in *United States* v. *Mission Rock Company,* 189 U. S. 391; 47 L. Ed. 865, and the judgment of the Supreme Court of the United States became final, in accordance with its said decision.

5. The lands sought to be described in the Complaint herein are alleged by said complaint to be submerged lands within the boundaries of the State of California situated below the line of mean low tide of the Pacific Ocean.

6. All tide and submerged lands underlying all navigable waters within the boundaries of the State, passed to the said State as a unit and by virtue of the same recognition and confirmation of its sovereignty in and to the same. By reason of the said unity and common and single basis of title of all tide and submerged lands held by the said

State prior to and after September 9, 1850, the question of title in and to all such lands located within the boundaries of the State of California by virtue of the adjudication in said case of *United States* v. *Mission Rock Company,* became and is *res adjudicata* and *stare decisis* by and between the United States of America on the one hand, and the State of California, its grantees, lessees and successors, on the other hand.

Sixth Affirmative Defense

1. Defendant hereby incorporates herein by this reference thereto the allegations and each of them contained in the First, Second and Third Affirmative Defenses of this Answer.

2. The United States of America has acquiesced in and recognized the title of the State of California and its grantees in and to all tide and submerged lands within the borders of the State of California for a period of approximately 95 years last past by reason of the matters and things hereinabove alleged. The United States of America is thereby precluded from asserting or claiming any right, title or interest adverse to the title and ownership of the State of California and its grantees (except for specified portions thereof heretofore granted to the United States by the State of California or its grantees, or condemned by plaintiff) as thus acquiesced in and recognized by the United States.

Seventh Affirmative Defense

1. Defendant incorporates herein by this reference thereto the allegations and each of them contained in the First, Second and Third Affirmative Defenses hereof.

2. By reason of the matters and things hereinabove alleged, the United States of America is estopped from

claiming or asserting any right, title or interest in and to the tide and submerged lands lying within the exterior boundaries of the State of California adverse to the title and ownership of said State and its grantees (except for specified portions thereof heretofore granted to the United States by the State of California or its grantees, or condemned by the United States).

Wherefore, defendant prays as follows:

1. That plaintiff take nothing by its complaint herein.

2. That defendant recover its costs and expenses incurred herein to be taxed by this Honorable Court; and

3. For such other, further and different relief as this Honorable Court may deem proper.

ROBERT W. KENNY,
Attorney General of the State of California.

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